

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Shawn W. Salevsky	:	
	:	
v.	:	No. 1080 C.D. 2007
	:	SUBMITTED: March 20, 2008
Commonwealth of Pennsylvania,	:	
Department of Transportation,	:	
Bureau of Motor Vehicles,	:	
Appellant	:	

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE JAMES R. KELLEY, Senior Judge**

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER**

FILED: August 5, 2008

The Department of Transportation, Bureau of Motor Vehicles (Department), appeals from the May 7, 2007 order of the Court of Common Pleas of Lehigh County (trial court) that sustained the statutory appeal of Shawn W. Salevsky from a three-month suspension of his vehicle registration for a 1995 Saturn sedan pursuant to Section 1786 (d)(1) of the Motor Vehicle Financial Responsibility Law (MVFRL).¹ For the reasons that follow, we reverse the trial court’s order.

¹ That Section provides that “[t]he Department of Transportation shall suspend the registration of a vehicle for a period of three months if it determines the required financial responsibility was not secured as required by this chapter. . . .” 75 Pa. C.S. § 1786(d)(1).

After Geico Indemnity Company notified the Department of the November 5, 2006 termination of the insurance policy covering the vehicle at issue, the Department by letter afforded Salevsky an opportunity to provide proof of financial responsibility within three weeks in order to avoid a registration suspension. When Salevsky failed to provide the requested information, the Department informed him that, effective March 1, 2007, the registration for that vehicle would be suspended for three months. Salevsky appealed to the trial court pursuant to Section 1377 (a) of the Vehicle Code. 75 Pa. C.S. § 1377(a).

At the May 2007 *de novo* hearing before the trial court, the Department submitted the pertinent documents into evidence to support its suspension. In response, Salevsky advised the trial court that Geico never informed him of the lapse of insurance and that he took care of the problem as soon as he became aware of it. To that effect, Salevsky presented proof of insurance with an effective date of December 29, 2006. The trial court sustained Salvesky's appeal, later noting in its opinion that

Counsel for Penn Dot is correct that no evidence was presented to show that the vehicle was covered during the alleged period. I admit that, contrary to my fixed philosophy, I administered the spirit of the law rather than its letter.

I believed that Mr. Salevsky did not receive notice from his insurer of the cancellation of his insurance, and I believed that he took care of it as soon as he was aware of the problem. Penn Dot only found out about his lack of insurance because he had complied with the law in the first place by having insurance. There was no accident, and no harm came to anyone from his lack of insurance. His offense was rather minor compared to the scofflaws who drive without ever trying to have insurance, and who get caught only when they have caused a tragedy for which there will be no compensation.

Trial Court's Decision at 1-2; R.R. 31-32a. The Department's timely appeal to this court followed.²

The issue before us is whether the trial court erred in sustaining Salevsky's statutory appeal of his registration suspension. We note that the trial court in considering that appeal was limited to determining whether "the vehicle is registered or of a type required to be registered" and whether "there has been either notice to the department of a lapse, termination or cancellation in the financial responsibility coverage as required by law for that vehicle or that the owner, registrant or driver was requested to provide proof of financial responsibility to the department, a police officer or another driver and failed to do so." 75 Pa. C.S. § 1786(d)(3)(i) and (ii). "Notice to the department of the lapse, termination or cancellation or the failure to provide the requested proof of financial responsibility shall create a presumption that the vehicle lacked the requisite financial responsibility." 75 Pa. C.S. § 1786 (d)(3)(ii). Such a "presumption may be overcome by producing clear and convincing evidence that the vehicle was insured at all relevant times." *Id.*

Here, the Department produced evidence that Geico terminated Salevsky's insurance on November 5, 2006. Salevsky countered that evidence with proof that he reacquired insurance with an effective date of December 29, 2006. Implicitly acknowledging that his new policy was insufficient to show continuous insurance coverage, Salevsky succinctly stated at the hearing that

² We are limited to determining whether the trial court committed a reversible error of law or abused its discretion. *Deklinski v. Department of Transportation, Bureau of Motor Vehicles*, 938 A.2d 1191 (Pa. Cmwlth. 2007).

“[u]nfortunately, the dates didn’t coincide.” May 7, 2007 Hearing, N.T. 2; R.R. 8a.

As we have repeatedly stated, the statutory scheme is clear and simply does not allow the court to resort to the sort of equitable remedies applied by the trial court here. *See O’Hara v. Department of Transportation, Bureau of Motor Vehicles*, 691 A.2d 1001, 1004 (Pa. Cmwlth. 1997). Accordingly, we reverse the trial court’s order.³

BONNIE BRIGANCE LEADBETTER,
President Judge

³ We note that an owner such as Salevsky is not without options. Although such an owner cannot challenge the insurance company’s alleged failure to provide him with notice of cancellation in the context of a statutory appeal under the Vehicle Code, “[p]roof that a timely request has been made to the Insurance Commissioner for such a review shall act as a supersedeas, staying the suspension of registration.” 75 Pa. C.S. § 1786(d)(5).

Here, the Department in its December 9, 2006 letter addressed the exact situation in which Salevsky found himself:

If you believe your insurance coverage was terminated and you did not receive a proper notice as required by insurance laws, you should contact the Pennsylvania Insurance Department, Bureau of Consumer Services for assistance. The toll free automated consumer hotline is **1-877-881-6388** or visit their website at www.insurance.state.pa.us. Please be prepared to provide the name of your insurance company, policy number and any notices of correspondence you may have received concerning your policy.

Exhibit C-1 at 8; R.R. 19a. We note that the Department did not issue its official registration suspension letter until January 25, 2007, and that Salevsky did not make any representations at the hearing that he even attempted to contact the Insurance Department.

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ORDER

AND NOW, this 5th day of August, 2008, the order of the Court of Common Pleas of Lehigh County in the above-captioned matter is hereby REVERSED.

BONNIE BRIGANCE LEADBETTER,
President Judge